

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Telephone Number:

Attn:

Refer Reply To:
CC:ITA:B07
PLR-100539-11
Date:
April 05, 2011

Taxpayer =

Firm =

Date 1 =

Date 2 =

Date 3 =

Dear :

This ruling responds to a letter dated October 26, 2010, submitted by Taxpayer requesting an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file a duplicate copy (with signature) of a Form 3115, Application for Change in Accounting Method, with the Internal Revenue Service (IRS) national office.

Facts

Taxpayer, a limited liability company taxed as a partnership, timely filed its federal tax return for the taxable year ending Date 1 along with the original of a Form 3115 to change its method of accounting for depreciation of certain property under the automatic procedures of Rev. Proc. 2008-52, 2008-2 C.B. 587, as amplified, clarified, and modified by Rev. Proc. 2009-39, 2009-2 C.B. 371. However, Taxpayer failed to file a signed duplicate copy of the Form 3115 with the IRS national office as required by section 6.02(3)(a) of Rev. Proc 2008-52. Firm assisted Taxpayer in the preparation of the Form 3115. Firm advised Taxpayer to attach the original Form 3115 to Taxpayer's federal tax return and to file the federal tax return before Date 2, the due date of the

return for the taxable year ending Date 1. Firm advised Taxpayer either to send the duplicate copy of the Form 3115 back to Firm so that Firm could hand deliver the duplicate copy to the IRS national office before Date 2, or to mail the duplicate copy of the Form 3115 directly to the IRS national office at the address provided in Rev. Proc. 2008-52, via certified mail, postmarked no later than Date 2. Because of a miscommunication between Taxpayer and Firm, Taxpayer mailed the duplicate copy of the Form 3115 to Firm on Date 2 with the understanding that Firm would file the duplicate copy with the IRS national office. Firm received the duplicate copy on Date 3, which precluded it from filing the duplicate copy with the IRS national office on or before the date of Taxpayer's timely filed tax return. Upon learning that the duplicate copy of the Form 3115 was not timely filed with the IRS national office, Taxpayer submitted this request for relief under §§ 301.9100-1 and 301.9100-3.

Law and Analysis

Rev. Proc. 2008-52 provides the procedures by which a taxpayer may obtain automatic consent to change certain methods of accounting. A taxpayer complying with all the applicable provisions of this revenue procedure has obtained the consent of the Commissioner of Internal Revenue to change the taxpayer's method of accounting under § 446(e) of the Internal Revenue Code and the Income Tax Regulations thereunder.

Section 6.02(3)(a) of Rev. Proc. 2008-52 provides that a taxpayer changing a method of accounting pursuant to Rev. Proc. 2008-52 must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's timely filed (including extensions) original federal income tax return for the year of change, and a copy (with signature) of the Form 3115 must be filed with the IRS national office no earlier than the first day of the year of change and no later than when the original is filed with the federal income tax return for the year of change.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Conclusions

Based solely on the facts and the representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to file the required duplicate copy of the Form 3115 (with signature) with the IRS national office for the taxable year ended Date 1. Please attach this ruling letter to the copy.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code. Specifically, no opinion is expressed or implied concerning whether Taxpayer is qualified to file the Form 3115 for the change in method of accounting for depreciation of certain property under Rev. Proc. 2008-52, or whether Taxpayer otherwise meets the requirements of Rev. Proc. 2008-52.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives.

Sincerely,

Willie E. Armstrong, Jr.
Senior Technician Reviewer, Branch 7
(Income Tax & Accounting)

Enclosure:
Copy for section 6110 purposes

cc: